POWERS OF CUSTOMS OFFICERS

1. POWER TO SEARCH SUSPECTED PERSONS ENTERING OR LEAVING INDIA, ETC. [SECTION 100]

If the proper officer has reason to believe that any person to whom this section applies has secreted about his person, any goods liable to confiscation or any documents relating thereto, he may search that person [Sub-section (1)].

Persons who can be searched: This section applies to the following persons, namely:

(a) any person who has landed from or is about to board, or is on board any vessel within the Indian customs waters;
(b) any person who has landed from or is about to board, or is on board a foreign-going aircraft;
(c) any person who has got out of, or is about to get into, or is in, a vehicle, which has arrived from, or is to proceed to any place outside India;
(d) any person not included in clauses (a), (b) or (c) who has entered or is about to leave India;
(e) any person in a customs area [Sub-section (2)].

2. POWER TO SEARCH SUSPECTED PERSONS IN CERTAIN OTHER CASES [SECTION 101]

Without prejudice to the provisions of section 100, if an officer of customs empowered in this behalf by general or special order of the Principal Commissioner/Commissioner of Customs, has reason to believe that any person has secreted about his person any goods* of the description specified in sub-section (2) which are liable to confiscation, or documents relating thereto, he may search that person [Sub-section (1)].
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*Specified goods*

The goods referred to in sub-section (1) are the following: –

(a) gold

(b) diamonds

(c) manufactures of gold or diamonds

(d) watches

(e) any other class of goods which the Central Government may, by notification in the Official Gazette, specify [Sub-section (2)].

**Distinction between the provisions of section 100 and section 101**

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**3. PERSONS TO BE SEARCHED MAY REQUIRE TO BE TAKEN BEFORE GAZETTED OFFICER OF CUSTOMS OR MAGISTRATE [SECTION 102]**

(a) Person may require to be searched before Gazetted Officer/Magistrate:

When any officer of customs is about to search any person under the provisions of section 100 or section 101, the officer of customs shall, if such person so requires, take him without unnecessary delay to the nearest gazetted officer of customs or magistrate [Sub-section (1)].
If such requisition is made, the officer of customs may detain the person making it until he can bring him before the gazetted officer of customs or the magistrate [Sub-section (2)].

(b) Gazetted Officer/Magistrate may discharge the person/direct the search to be made: The gazetted officer of customs or the magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge the person but otherwise shall direct that search be made [Sub-section (3)].

(c) Two or more persons to attend and witness search: Before making a search under the provisions of section 100 or section 101, the officer of customs shall call upon two or more persons to attend and witness the search and may issue an order in writing to them or any of them so to do; and the search shall be made in the presence of such persons and a list of all things seized in the course of such search shall be prepared by such officer or other person and signed by such witnesses [Sub-section (4)].

(d) Female to be searched only by a female: No female shall be searched by any one excepting a female [Sub-section (5)].

4. POWER TO SCREEN OR X-RAY BODIES OF SUSPECTED PERSONS FOR DETECTING SECRETED GOODS [SECTION 103]

(a) Detention of the person referred to in section 100(2): Where the proper officer has reason to believe that any person referred to in sub-section (2) of section 100 has any goods liable to confiscation secreted inside his body, he may detain such person and produce him without unnecessary delay before the nearest magistrate [Sub-section (1)].

(b) Magistrate may discharge the person: A magistrate before whom any person is brought under sub-section (1) shall, if he sees no reasonable ground for believing that such person has any such goods secreted inside his body, forthwith discharge such person [Sub-section (2)].

(c) Magistrate may order to X-ray the body of such person: Where any such magistrate has reasonable ground for believing that such person has any such goods secreted inside his body and the magistrate is satisfied that for the purpose of discovering such goods it is necessary to have the body of such person screened or X-rayed, he may make an order to that effect [Sub-section (3)].
Hence, a person [referred to in section 100(2)] can be screened/X-rayed only if he is suspected to have secreted any goods **INSIDE HIS BODY**. Otherwise, he can only be searched.

(d) **Person to be X-rayed to be taken before radiologist:** Where a magistrate has made any order under sub-section (3), in relation to any person, the proper officer shall, as soon as practicable, take such person before a radiologist possessing qualifications recognized by the Central Government for the purpose of this section, and such person shall allow the radiologist to screen or X-ray his body [Sub-section (4)].

(e) **Radiologist shall forward report to magistrate:** A radiologist before whom any person is brought under sub-section (4) shall, after screening or X-raying the body of such person, forward his report, together with any X-ray pictures taken by him, to the magistrate without unnecessary delay [Sub-section (5)].

(f) **Magistrate may direct to bring out such goods:** Where on receipt of a report from a radiologist under sub-section (5) or otherwise, the magistrate is satisfied that any person has any goods liable to confiscation secreted inside his body, he may direct that suitable action for bringing out such goods be taken on the advice and under the supervision of a registered medical practitioner and such person shall be bound to comply with such direction.

However, in the case of a female no such action shall be taken except on the advice and under the supervision of a female registered medical practitioner [Sub-section (6)].

Where any person is brought before a magistrate under this section, such magistrate may for the purpose of enforcing the provisions of this section order such person to be kept in such custody and for such period as he may direct [Sub-section (7)].

(g) **No screening if person himself admits that goods are secreted in his body:** Nothing in this section shall apply to any person referred to in sub-section (1), who admits that goods liable to confiscation are secreted inside his body, and who voluntarily submits himself for suitable action being taken for bringing out such goods [Sub-section (8)].

**Meaning of registered medical practitioner**

“**Registered medical practitioner**” means any person who holds a qualification granted by an authority specified in the Schedule to the Indian Medical Degrees Act, 1916, or notified under section 3 of that Act, or by an authority specified in
any of the Schedules to the Indian Medical Council Act, 1956.

5. POWER TO ARREST [SECTION 104]

To tackle the menace of smuggling and other serious economic offences including commercial frauds effectively, apart from penal action in departmental adjudication, the Customs Act, also provides for criminal prosecution action. The persons involved can be arrested and prosecuted in a Court of Law. Prosecution action can also be taken for providing false documents/declarations to Customs and for obstructing Customs officers working intentionally.

A customs officer duly authorised by the Principal Commissioner/Commissioner can arrest any person, in India or within the Indian customs waters, who is guilty of an offence punishable under section 132 or section 133 or section 135 or section 135A or section 136 of the Customs Act [Section 104(1)].

Under the law, the person being arrested is entitled to be informed about the grounds for such arrest under the law. The said section also enjoins that provides that every person arrested under the Act has to be taken without unnecessary delay to the nearest Magistrate [Sub-section (2)].

Where an officer of customs has arrested any person under sub-section (1), he shall, for the purpose of releasing such person on bail or otherwise, have the same powers and be subject to the same provisions as the officer-in-charge of a police-station has and is subject to under the Code of Criminal Procedure, 1973 [Sub-section (3)].

The threshold limits for arrest have been enhanced vide Circular No. 28/2015 Cus dated 23.10.2015 pursuant to the enhancement in threshold limits for prosecution. The threshold limits for arrest are also the same as mentioned in case of initiating prosecution [Refer Unit-IV]. It has been clarified that powers of arrest should be exercised in exceptional situation.

However, such threshold limit would not apply in case of offences relating to FICN, arms, ammunitions and explosives, antiques, art treasures, wild life items and endangered species of flora and fauna. In such cases, arrest, if required on the basis of facts and circumstances of the case, may be considered irrespective of value of offending goods involved.
6. POWER TO SEARCH PREMISES [SECTION 105]

Section 105 provides that if the Assistant/Deputy Commissioner of Customs or in any area adjoining the land frontier or the coast of India an officer of customs specially empowered by name in this behalf by the Board, has reason to believe that any goods liable to confiscation, or any documents or things which in his opinion will be useful for or relevant to any proceeding under this Act, are secreted in any place, he may authorise any officer of customs to search or may himself search for such goods, documents or things.

The provisions of the Code of Criminal Procedure, 1898 relating to searches shall, so far as may be, apply to searches under this section.

7. POWER TO STOP AND SEARCH CONVEYANCES [SECTION 106]

Section 106 (1) provides that where the proper officer has reason to believe that any aircraft, vehicle or animal in India or any vessel in India or within the Indian customs waters has been, is being, or is about to be, used in the smuggling of any goods or in the carriage of any goods which have been smuggled, he may at any time stop any such vehicle, animal or vessel or, in the case of an aircraft, compel it to land, and -

(a) rummage and search any part of the aircraft, vehicle or vessel;

(b) examine and search any goods in the aircraft, vehicle or vessel or on the animal;

(c) break open the lock of any door or package for exercising the powers conferred by clauses (a) and (b), if the keys are withheld.

Sub-section (2) of section 106 provides that where for the purposes of sub-section (1)

(a) it becomes necessary to stop any vessel or compel any aircraft to land, it shall be lawful for any vessel or aircraft in the service of the Government while flying her proper flag and any authority authorised in this behalf by the Central Government to summon such vessel to stop or the aircraft to land, by means of an international signal, code or other recognized means, and thereupon, such vessel shall forthwith stop or such aircraft shall forthwith
and if it fails to do so, chase may be given thereto by any vessel or aircraft as aforesaid and if after a gun is fired as a signal the vessel fails to stop or the aircraft fails to land, it may be fired upon;

(b) it becomes necessary to stop any vehicle or animal, the proper officer may use all lawful means for stopping it, and where such means fail, the vehicle or animal may be fired upon.

8. POWER TO INSPECT [SECTION 106A]

Any proper officer authorised in this behalf by the Principal Commissioner/Commissioner of Customs may, for the purpose of ascertaining whether or not the requirements of this Act have been complied with, at any reasonable time, enter any place intimated under Chapter IVA or Chapter IVB, as the case may be, and inspect the goods kept or stored therein and require any person found therein, who is for the time being in charge thereof, to produce to him for his inspection the accounts maintained under the said Chapter IVA or Chapter IVB, as the case may be, and to furnish to him such other information as he may reasonably require for the purpose of ascertaining whether or not such goods have been illegally imported, exported or are likely to be illegally exported.

9. POWER TO EXAMINE PERSONS [SECTION 107]

Any officer of customs empowered in this behalf by general or special order of the Principal Commissioner/Commissioner of Customs may, during the course of any enquiry in connection with the smuggling of any goods,

(a) require any person to produce or deliver any document or thing relevant to the enquiry;

(b) examine any person acquainted with the facts and circumstances of the case.

10. POWER TO SUMMON PERSONS TO GIVE EVIDENCE AND PRODUCE DOCUMENTS [SECTION 108]

Any Gazetted officer of Customs shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a
document or any other thing in any inquiry which such officer is making under this Act. A summons to produce documents or other things may be for the production of certain specified documents or things or for the production of all documents or things of a certain description in the possession or under the control of the person summoned. All persons so summoned shall be bound to attend either in person or by an authorised agent and state the truth upon any subject respecting which they are examined or make statements and produce such documents and other things as may be required. Every such inquiry as aforesaid shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code, 1860.

11. OBLIGATION TO FURNISH INFORMATION [SECTION 108A]

Any specified person who is responsible for maintaining record of registration or statement of accounts or holding any other information under any of the Acts which is considered relevant, shall furnish such information to the proper officer in such manner as may be prescribed by rules.

Further, where the proper officer considers that the information furnished is defective, he may intimate the defect to the person who has furnished such information. The opportunity of rectifying the defect shall be given within a period of 7 days from the date of such intimation or within such further period which may be allowed by the proper officer on an application made in this behalf.

In case the defect is not rectified within the said period of 7 days or, further period, as the case may be, so allowed, then, notwithstanding anything contained in any other provision of this Act, such information shall be deemed as not furnished and the provisions of this Act shall be applicable.

Where a person who is required to furnish information has not furnished the same within the specified time, the proper officer may serve upon him a notice requiring him to furnish such information within a period not exceeding 30 days from the date of service of the notice.
12. PENALTY FOR FAILURE TO FURNISH INFORMATION RETURN [SECTION 108B]

*If the person who is required to furnish information under section 108A fails to do so within the period specified in the notice, the proper officer may direct such person to pay, by way of penalty, a sum of one hundred rupees for each day of the period during which such failure continues.*

13. POWER TO REQUIRE PRODUCTION OF ORDER PERMITTING CLEARANCE OF GOODS IMPORTED BY LAND [SECTION 109]

Any officer of customs appointed for any area adjoining the land frontier of India and empowered in this behalf by general or special order of the Board, may require any person in possession of any goods which such officer has reason to believe to have been imported into India by land, to produce the order made under section 47 permitting clearance of the goods:

However, this section shall not apply to any imported goods passing from a land frontier to a land customs station by a route appointed under clause (c) of section 7.

14. SEIZURE OF GOODS, DOCUMENTS AND THINGS [SECTION 110]

An officer of Customs can seize any goods, if he has reason to believe that the same are liable to confiscation, under the Customs Act. *Whenever goods are being seized, the proper officer must also pass an appropriate order (seizure memo/order/etc.) in addition to panchnama, clearly mentioning the reasons to believe that the goods are liable for confiscation.* Where it is not practicable to seize any such goods, the proper officer may serve on the owner of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer. *In such cases, investigations should be fast-tracked to expeditiously decide whether to place the goods under seizure or to release the same to their owner.* The proper officer may also seize any document or things that may be relevant to any proceedings under the Custom Act. However, the person from whom these documents are seized is entitled to make copies of the same.
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The person from whom the goods are seized is issued a show cause notice, usually within six months. However, the Principal Commissioner/Commissioner of Customs, on sufficient cause being shown, can extend the time period for issue of Show cause notice, by a further six months.

In case the seized goods are perishable or hazardous in nature or is prone to depreciate in value over time or for reasons of constraints in space, the government can notify these goods and these goods can be disposed off before the conclusion of the proceedings eg. All electronic goods, currency, liquors, P&P medicine, Gold, Silver etc. [Section 110]

15. SEIZED GOODS, DOCUMENTS AND THINGS PENDING ADJUDICATION TO BE RELEASED PROVISIONALLY [SECTION 110A]

Any goods, documents or things seized under section 110, may, pending the order of the adjudicating authority, be released to the owner. Such release shall be made when the owner executes a bond in the proper form with such security and conditions as the adjudicating authority may require. The person from whom the goods are seized is issued a show cause notice, usually within six months, irrespective of the fact whether goods remain seized or are provisionally released. However, the Principal Commissioner/Commissioner of Customs, on sufficient cause being shown, can extend the time period for issue of Show cause notice, by a further six months.

Illustration

Examine, with the help of a decided case law, whether it is mandatory for the Customs Officers to make available the seized documents to the person (from whose custody such documents were seized) for making copies thereof.

Answer

Section 110(4) of the Customs Act, 1962 provides that the person from whose custody any documents are seized under sub-section (3) shall be entitled to make copies thereof or take extract therefrom in the presence of a officer of Customs. Thus, Customs Officers are required to make available the seized documents to the person from whose custody such documents were seized, if such person wants to make copies thereof.

The above mentioned issue came up for consideration before the Bombay
High Court in case of *Manish Lalit Kumar Bavishi v. Addl. Dir. General, DRI 2011 (272) E.L.T. 42*. The High Court held that from the language of section 110(4), it was apparent that the Customs officers were mandatorily required to make available the documents asked for. It was the party concerned who had the choice of either asking for the document or seeking extract.

If any document was seized during the course of any action by an officer under the provisions of the Customs Act, that officer was bound to make available those documents. The denial by the Revenue to make the documents available was clearly an act without jurisdiction.